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ARIZONA ATTORNEY GENERAL

June 27, 1984

The Honorable Tom Collins
Maricopa County Attorney
101 West Jefferson
Phoenix, AZ 85003

Re: 184-092 (R84-096)

Dear Mr. Collins:

This letter is in response to your inquiry concerning the scope of continued representation under A.R.S. § 16-804.A when a candidate representing a new political party receives over 5% of the votes cast for governor in the last preceding state general election. Specifically, you have asked the following questions:

1. Is the Libertarian Party entitled to continued representation as a political party on the official 1984 primary and general election ballots for county officers under A.R.S. § 16-804.A ?
2. Is the Libertarian Party entitled to elect precinct committeemen, form a county committee under A.R.S. § 16-821, and elect officers under A.R.S. § 16-824?

These questions arise from the following fact situation. In the 1982 general election, the Libertarian Party qualified for the general election ballot for the office of Governor by submitting petitions with the requisite number of signatures pursuant to A.R.S. § 16-801. At the general election, its candidate for Governor received more than 5% of

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all votes cast. Based on the votes cast for its gubernatorial candidate, the Libertarian Party asserts that, under A.R.S. § 16-804, it qualified for continued representation on the state primary and general election ballots and on all primary and general election ballots for county officers.

For the reasons set forth below, we believe that A.R.S. § 16-804.A allows a political party continued representation on the primary and general election ballots for county officers, based upon the vote of such party for governor or presidential electors in a state election, only in those counties where the party received over 5% of the votes cast for governor or presidential electors.^{1/}

A.R.S. § 16-804, which provides for "continued representation," must be interpreted in conjunction with A.R.S. §§ 16-801 and 16-802 which set forth the procedure for initial recognition of a new political party. With respect to state elections, A.R.S. § 16-801 provides that a new political party may become eligible for recognition, appear on the ballot at the primary election, and be accorded a column on the ballot at the general election, upon filing a petition signed by a number of qualified electors equal to not less than two percent of the total votes cast for governor or presidential electors at the last preceding general election. With respect to county and municipal elections, A.R.S. § 16-802 parallels the provisions of § 16-801 but requires a slightly higher percentage of signatures. It provides that a new political party shall be eligible for recognition and appear on the ballot upon filing a petition signed by a number of qualified electors equal to not less than three percent of the votes cast for county attorney in the case of a county petition or for mayor in the case of a city or town petition.

The separate mechanisms established by these statutes permit the recognition of a new political party at either a state election or at a county or municipal election. Indeed,

1. It should be noted that A.R.S. § 16-804.B also provides that a political party may obtain the right to continued representation by having registered voters equal to at least one percent of the total registered voters in the jurisdiction. That provision is not at issue in this opinion and is therefore not addressed.

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the court in Kromko v. State, 132 Ariz. 161, 644 P.2d 897 (1982), specifically recognized that qualification under these statutes for recognition at the state level does not necessarily result in recognition at the county or local level:

The Libertarian ballot was different in that the Libertarian Party had qualified for a place on the ballot only for state and federal offices, not for county offices.

132 Ariz. at 162, 664 P.2d at 898.

After a political party has qualified to appear on the state ballot under A.R.S. § 16-801, or on a county or municipal ballot under A.R.S. § 16-802, it may acquire the right to "continued" party representation under § 16-804. A.R.S. § 16-804 provides, in pertinent part, as follows:

- A. A political organization which at the last preceding general election cast for governor or presidential electors or for county attorney or for mayor, whichever applies, not less than five per cent of the total votes cast for governor or presidential electors, in the state or in such county, city or town, is entitled to representation as a political party on the official ballot for state officers or for officers of such county or local subdivision.

(Emphasis added.)

This two-step process for initial and continued party representation was acknowledged by the Arizona Supreme Court in Kannarr v. Hardy, 118 Ariz. 224, 575 P.2d 1250 (1978). Although dicta, the court stated:

Having obtained party representation by way of A.R.S. § 16-202 [now A.R.S. § 16-801], the statutes require that the new party must receive a certain percentage of the votes cast in the general election in order to retain the status of an official political party.

118 Ariz. at 225, 575 P.2d at 1251.

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A.R.S. § 16-804 preserves the ability of a new political party to be recognized on either a statewide, countywide or local basis by providing for continued representation based upon the vote of such political party for "governor or presidential electors or for county attorney or for mayor, whichever applies . . ." Under this statutory scheme it is clear that a new party is entitled to continued representation on the state ballot if it casts sufficient votes for Governor or presidential electors in a state election. It is also clear that such a party is entitled to continued representation on a county or municipal ballot if it casts sufficient votes for county attorney or mayor in a county or local election. The question raised by your inquiry, however, is whether such a party is entitled to continued representation on all county and municipal ballots based upon the vote for its candidate in a state election for governor.

We believe there are three possible interpretations of A.R.S. § 16-804 on this issue. First, it is possible to construe this statute as being all inclusive. That is, once a political party has qualified for continued representation on the state ballot by receiving not less than five percent of the vote cast for governor or presidential electors, it would be automatically entitled to continued representation on all county and municipal ballots. Under such an all inclusive interpretation, however, it would be possible for a new political party to achieve the five percent vote required for continued representation by drawing a high percentage of votes in one or two counties while receiving little or no support in any other county. Yet, the party would automatically be placed on the ballot in all of the remaining counties. In addition, because the requirements are the same, it would automatically be entitled to a place on the ballots of all municipalities with partisan elections throughout the state.

Such a construction of A.R.S. § 16-804 entitling a political party to continued representation in a county or municipality where it had demonstrated little or no support whatsoever, would eliminate the statutory distinction between recognition at the state, county and municipal levels. It would also defeat the State's legitimate interest in requiring some showing of support by a new political party before allowing its name to appear on the ballot. As the U.S. Supreme Court said in Jenness v. Fortson, 403 U.S. 431 (1971) quoted and relied upon by the Arizona Supreme Court in Kannarr v. Hardy, Supra: 118 Ariz. 224, 575 P.2d 1250 (1978):

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There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot--the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election.

403 U.S. at 442. (Emphasis added.)

The second possible interpretation of A.R.S. § 16-804 would require a new political party to petition on to the ballot in each county and municipality throughout the state under A.R.S. § 16-802 and thereafter secure not less than 5% of the vote cast for county attorney or mayor in each such county and municipality. Such an interpretation would require a new party to go through the petitioning process in each county or municipality in which it wanted to run a candidate for county or municipal office even if its candidates for governor or presidential electors had consistently secured a majority of the votes cast for those offices within such jurisdiction. This narrow interpretation of A.R.S. § 16-804 would impose an unnecessary and unfair burden upon new political parties.

We do not believe either of these alternate interpretations is reasonable or correct. The third possible interpretation and the one which we adopt would allow a political party to qualify for continued representation on the county or municipal level by virtue of a state election if the party received over five percent of the vote cast in the state election in that county or municipality. This interpretation comports with the State's interest in requiring a party to establish a significant amount of support before it will be allowed to be represented on the ballot. At the same time, it avoids imposing on the party the burden of complying with A.R.S. § 16-802 in those jurisdictions where it has already demonstrated that over five percent of the voters of the county or municipality have supported its candidates, albeit in a state election.

Under this interpretation the Libertarian Party would be entitled to representation on the ballot for county officers if its candidate for governor received over 5% of the votes cast for governor in the 1982 general election in that county. If,

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however, the party's candidate for governor did not receive over five percent of the votes cast in the county it would have to comply with the provisions of A.R.S. § 16-802 in order to appear on the ballot for such offices.

You have also asked whether the Libertarian Party is entitled to form a county committee under A.R.S. § 16-821 and elect officers under A.R.S. § 16-824. We believe that the answer is clear and in accordance with our interpretation of A.R.S. § 16-804. The pertinent portion of A.R.S. § 16-821 provides as follows:

A. At the primary election the members of a political party residing in each precinct in which any number of votes were cast at the last preceding general election for the nominee of such party for governor, or for presidential electors for the nominee of such party for president, in presidential election years, shall choose one of their number as a county precinct committeeman, and the members shall choose one additional precinct committeeman for each one hundred twenty-five votes or major fraction thereof so cast. The whole number of precinct committeemen of a political party shall constitute the county committee of the party.^{2/}

(Emphasis added.)

2. It should be noted that A.R.S. § 16-821 was amended by 1984 Ariz. Sess. Laws (2nd Reg. Sess.), Ch. 104, effective after December 31, 1984. Under the statute as amended the authority to elect precinct committeemen and form a county committee is based upon the right to continued representation under A.R.S. § 16-804 and the number of authorized precinct committeemen is determined by the number of registered voters of the party rather than the number of votes cast. The pertinent portion of the amended statute reads:

(Footnote continued on next page.)

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Thus, if the Libertarian party's candidate for governor received any votes in a precinct then that party is entitled to elect a county precinct committeemen and an additional precinct committeeman for each 125 votes or major fraction thereof cast in such precinct. Thereafter, the party may elect officers in accordance with the procedure set forth in A.R.S. § 16-824.

Very truly yours,



BOB CORBIN
Attorney General

BC:SMS:pd

2. (Footnote continued)

A. At the primary election the members of a political party entitled to representation pursuant to section 16-804 residing in each precinct shall choose one of their number as a county precinct committeeman, and the members shall choose one additional precinct committeeman for each one hundred twenty-five voters or major fraction thereof registered in the party in the precinct as reported pursuant to section 16-168, subsection q on March 1 of the year in which the general election is held. The whole number of precinct committeemen of a political party shall constitute the county committee of the party.

(Emphasis added.)